IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 7.9.2006

Coram

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

CRIMINAL APPEAL No1207 OF 2004

Nataraj ...Appellant

-Vs.-

State rep.by
The Inspector of Police
Kottur Police Station
Pollachi, Coimbatore District. ...Respondent

Appeal against the judgment dated 9.8.2004 made in S.C.No.326 of 2003 on the file of Additional District and Sessions Court cum Essential Commodities Act, Special Court, Coimbatore.

For Appellant : Mr.K.Kalayanasundaram
For Respondent : Mr. N.R.Elango,A.P.P.

J U D G M E N T

(Judgment of the Court was delivered by R. Balasubramanian, J)

The appellant in this case stands convicted in S.C.No.326 of 2003 on the file of Additional Court of Sessions and Special Court for Essential Commodities Act, Coimbatore under Sections 302 and 352 I.P.C. for which he stands sentenced to undergo imprisonment for life together with a fine of Rs.20,000/- carrying a default sentence for the former offence and six months rigorous imprisonment together with a fine of Rs.500/- carrying a default sentence for the latter offence. Hence he is before this court in this appeal. Heard Mr.K.Kalyanasundaram, learned counsel appearing for the appellant and Mr.N.R.Elango, learned Additional Public Prosecutor for the State.

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2. According to the prosecution at 10.00 a.m. on 27.8.2002 the accused poured diesel on Nachammal aged about 70 years and set fire to her resulting in her death in the course of the day. In the course of the same transaction, he pushed violently P.W.1 - Nachammal's son, who came in between and thereby punishable for the offences referred to earlier. In all, the prosecution examined P.Ws.1 to 14 besides marking Exs.P.1 to P.25 and M.Os.1 to 9. The defence did not let in any oral or documentary evidence. P.W.1 is the husband of P.W.2. P.W.1 is the son of the deceased and accused Nataraj is P.W.1's cousin. P.W.1's family, Nataraj and another cousin Kanagaraj have lands irrigating the same from a common water source. The occurrence was on 27.8.2002 at about 10.00 a.m. That was the turn day for P.W.1's family to irrigate. P.Ws.1,2 and the deceased went to the well sufficiently equipped with diesel to make the oil engine fitted to the well run. The accused came there and objected to P.W.1's family irrigating the lands. In that context the occurrence is shown to have taken place. P.W.1 would state that after leaving his mother near the well and keeping the can containing diesel in that place, he was attending to the agricultural work. The accused emerged at the scene and questioned the deceased about the irrigation of the lands by the prosecution party, which was followed by exchange of words. P.W.1 was carrying on agricultural work away from the well. He heard the noise of the exchange of words between his mother and the accused and at that time, he saw the accused pouring diesel on his mother. His mother called him by his name to come and even before P.W.1 could reach, the accused threw a lighted matchstick on his mother and immediately his mother was in flames. On reaching the place P.W.1 asked the accused as to why he had done like that, which ended in a scuffle between the two and they were rolling on the ground. The accused always used to have a knife and by removing that knife he stabbed him near his left leg knee and the accused made good his escape. By using a gunny bag, the flames on his mother was attempted to be put out. P.W.1 went to the police station to give a complaint. He got the complaint reduced into writing by securing a person, who was available near the police station and gave the complaint at the police station. Ex.P.1 is the said complaint. His wife P.W.2 took injured Nachammal to the Government Hospital at Pollachi. Nachammal breathed her last at 11.30 p.m. in the night.

3. P.W.13 is the Sub Inspector of police during the relevant time in the investigating police station, before whom at 4.00 p.m. on 27.8.2002 P.W.1 appeared and gave the written complaint, which he registered in his Police Station Crime No.237 of 2002 as Ex.P.1 under Section 307 I.P.C. Ex.P.19 is the printed First Information Report. He served a copy of the printed First Information Report on P.W.1 under his acknowledgment. Then he sent the Express Records to the Court as well as to the higher officials. He assisted the Inspector of Police. P.W.14 is the Inspector of Police. At 4.30 p.m. 27.8.2002, he received the information from P.W.13 about this crime and by directing P.W.13 to send the Express Records to the crime scene, P.W.14 proceeded to the crime scene, where in

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the presence of P.W.6 and another, he prepared Ex.P.2, the Observation Mahazar and Ex.P.20, the rough sketch. He caused the scene of occurrence to be photographed and M.O.8 series and M.O.9 series are the photographs and the negatives. From the crime scene he recovered M.Os.3 to 7 under Ex.P.3 attested by the same witnesses. He examined P.Ws.1,3,4 and 5 by recording their statements. Then he proceeded to the Government Hospital at Pollachi, where by examining Nachammal he recorded her statement. Ex.P.25 is the said statement. He also examined P.W.2 present there and recorded her statement. In the following morning at 1.30 p.m. he received the information that Nachamal died and accordingly altered the section of offence from one under Section 307 I.P.C. into one under section 302 I.P.C. Ex.P.21 is the altered printed First Information Report, which he sent to the Court as well as to the higher officials. At that time P.W.7 produced the accused before him, stating that the accused had confessed the crime. The accused was produced along with Ex.P.4, the statement of the accused reduced into writing by P.W.7. P.W.14 arrested him and examined him in the presence of P.W.7 and another. The accused at that time gave a voluntary confession statement. Then in the presence of P.W.7 and another at 6.30 p.m. on that day, an yellow colour plastic can with a capacity of 10 litres smelling diesel was recovered under Ex.P.5. M.O.1 is the said can. Then in the Government Hospital at Pollachi, P.W.14 conducted inquest over the dead body in the presence of panchayatdars and witnesses and prepared Ex.P.22 the inquest report. During inquest he examined P.Ws.1,2 and others by recording their statements. Then he sent a requisition for conducting post-mortem.

4. P.W.12 is the police constable, who carried the requisition to the Government Hospital for post-mortem, where he identified the dead body. After post-mortem he removed a checked red-yellow cotton saree from the dead body and handed over the same to the investigating officer along with his report Ex.P.18. M.O.2 is the saree which was removed by him from the dead body. The dead body was handed over to the relatives. P.W.10 is the Doctor, who did post-mortem on the dead body on receipt of Ex.P.12, the requisition and Ex.P.23, the history of the case. He commenced post-mortem at 2.10 p.m. on 28.8.2002 and during post-mortem he found various symptoms as noted by him in Ex.P.13, the post-mortem report. The symptoms noted are as hereunder:-

> "Appearance found at the post-mortem lies on its back symmetrical. Skin discoloured. Therefore of burns Iris black-grey hair – scalp – 1 1/2 inches long burns below the neck extending upto both knee joint both anteriorly and posteriorly 80% deep burns eyelids closed. Nose and mouth ears no discharge. Jaws clenched.
> Teeth complete 8 | 8
> -----
> 8 | 8

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THORAX: No fracture ribs. Heart – Pale Chambers empty. Lungs, Liver, Spleen, Kidney cut section congested. Laryngeal neuroma black in colour. Hyoid bone intact. Stomach – contains 100ml of partially digested food. Intestines – distended with gas, Pelvis, skull no fracture membranes intact. Brain – No injury – clear, spine no fracture.
Post-mortem conlcuded at 3.10 p.m. on 28.8.2002.

The Doctor opined that death is due to extensive burns and shock and death would have occurred 12 to 14 hours prior to autopsy. He gave final opinion on receipt of the report on viscera that the deceased appear to have died of shock due to extensive burns below the neck up to the level of knee joints both anteriorly and posteriorly, about 12 – 14 hours prior to post-mortem. P.W.14 sent the arrested accused for judicial remand and the case properties to the Court with a requisition to subject the same for chemical examination. He recovered M.O.2 produced by P.W.12 along with his special report Ex.P.18.

5. P.W.2 is the wife of P.W.1 and daughter-in-law of the deceased. P.Ws.3 and 4 are independent witnesses. P.Ws.2,3 and 4 gave evidence regarding the occurrence proper on the same lines as spoken to by P.W.1. P.W.5 is not an eye witness to the occurrence. But however he travelled in the car in which P.W.2 was taking injured Nachammal to the hospital for treatment. He would state that enroute when he asked Nachammal as to how she came to sustain the injuries she answered that Nataraj by pouring diesel on her, set fire to her. He would also state that enroute Nachammal out of pain was blaming Nataraj for pouring diesel on her and setting fire to her. P.W.6 is a resident of Kariyanchettipalayam, where the prosecution party resides. He had mediated between the prosecution party on the one hand and the accused on the other hand regarding irrigation of the lands. He witnessed the preparation of Ex.P.2, the Observation Mahazar and recovery of M.Os.3 to 7 under Ex.P.3. P.W.7 is the Village Administrative Officer, who would state that at 9.30 p.m. on 27.8.2002, the accused appeared before him and confessed that regarding the dispute to irrigate the lands, he committed the offence on Nachammal as projected by the prosecution and gave a statement. P.W.7 reduced that narration into writing, which is Ex.P.4. Then P.W.7 by taking the accused produced him before P.W.14 along with Ex.P.4. He is a witness to the recovery of M.O.1 under Ex.P.5. P.W.8 is the Magisterial Clerk, who speaks about the receipt of the case properties; sending the same to the laboratory and receipt of the reports. P.W.9 is the duty Doctor in the Government Hospital at Pollachi before whom at 12.30 p.m. on 27.8.2002 Nachammal was brought for treatment by her daughter-in-law P.W.2. Nachammal told P.W.9 that at 10.00 a.m. on 27.8.2002 Natraj/the accused

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poured diesel on her and then set fire to her. P.W.9 found Nachammal oriented though her pulse and blood pressure were on the low side. At 11.45 p.m. on that night Nachammal died. She requested the judicial authority to record the dying declaration and she was present when P.W.11 recorded the dying declaration of Nachammal. She had given the necessary certificate in the dying declaration. P.W.11 is the Judicial Magistrate, who on receipt of the intimation from the hospital authorities at 1.45 p.m. on 27.8.2002 reached the hospital at 2.00 p.m. on the same day and after satisfying himself by questioning Nachammal that she was in a fit and conscious state of mind, he proceeded to record her dying declaration. P.W.9 also certified about Nachammal's fit and conscious state of mind throughout the recording of dying declaration. Ex.P.15 is the dying declaration. Ex.P.16 is the intimation received by the Judicial Magistrate from the hospital to record the dying declaration and as an enclosure to Court's letter Ex.P.17, he sent the dying declaration to the jurisdiction court. P.W.14 after completing all the other legal formalities filed the final report in Court against the accused on 10.10.2002 for the offences referred to earlier.

6. When the accused was questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against him, he denied each and every circumstance put up against him as false and contrary to facts. As already stated, neither oral nor documentary evidence was brought before court at his instance. Mr.K.Kalayanasundaram, learned counsel for the appellant by taking us through Exs.P.15 and P.25, the two dying declarations, one recorded by the Judicial Magistrate and the other recorded by P.W.14, the Inspector of Police, would contend that there are contradictions and inconsistencies in both the dying declarations, which go to the root of the matter and therefore both the dying declarations should be disbelieved. Learned counsel for the appellant by taking us through the evidence of P.Ws.1 to 4 would contend that their evidence is unbelievable and therefore they should be rejected. Learned counsel took enormous pains to convince us that since there are contradictions in the evidence of the witnesses namely, whether the prosecution party or the accused, were irrigating from the common source, their evidence must be disbelieved in toto. According to him when the very motive for the crime is open to a serious doubt, the entire dying declaration must also be disbelieved since the dying declaration also discloses the same motive. There is an inordinate delay in giving the complaint. P.W.1 admitted that even at 11.00 a.m. on 27.8.2002, the accused was in the police station and therefore the extra judicial confession relied upon by the prosecution is so very artificial and therefore it cannot be acted upon. P.W.9 admitted the presence of P.W.2 by the side of Nachammal while P.W.11 recorded the dying declaration. This singular material is enough to discredit Ex.P.15 as a tutored one. In meeting these points, learned Additional Public Prosecutor by relying upon the judgment of the Supreme Court reported in A.I.R. 1974 Supreme Court 2188 (GODHU v. STATE OF RAJASTHAN) would contend

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that if the dying declaration is severable, without the severed part affecting the other part and if that part on which the Court wants to rely upon there is corroboration, then there is no harm in acting upon that part of the dying declaration on which the Court wants to rely upon. In this case the dying declaration is definitely severable and such a severance would not affect the other part of the dying declaration, which the Court wants to act upon. For that part of the dying declaration which is incriminatory against the accused there is corroboration in the form of the evidence of P.Ws.1 to 4. When the prosecution case is found to be reliable namely, as spoken to by P.Ws.1 to 4 and the evidence of P.W.9 about the oral dying declaration given by the deceased to her at 12.30 p.m. on the same day, namely, nearly within 2 1/2 hours, then the delay in giving the complaint pales into insignificance. Evidence of P.Ws.1 and 13 would show that P.W.1 appeared in the police station only at 4.00 p.m. on 27.8.2002. If that is so, the evidence of P.W.1 that he saw the accused in the police station at 11.00 a.m. itself is highly improbable. There is no artificiality in regard to the extra judicial confession and therefore Ex.P.4 could also be acted upon. In other words, according to the learned Additional Public Prosecutor, the evidence is wholesome against the accused warranting no interference.

7. Having regard to the submissions made by the learned counsel on either side, we went through the entire materials on record. Ex.P.15 is the judicial dying declaration recorded at 2.00 p.m. by P.W.11, the Judicial Magistrate. P.W.9 is the duty Doctor, before whom Nachammal was taken for treatment at 12.30 p.m. on 27.8.2002 within 2 1/2 hours. P.W.13 admitted that Pollachi can be reached from the Police Station by one hour or so. The occurrence place is 5 kms away from the investigating police station. Therefore to reach Pollachi from the occurrence Village, it may take not less than one hour. The occurrence was at 10.00 a.m. on 27.8.2002. The evidence shows that a Car came by that side and it was stopped, in which injured Nachammal was taken to the hospital by P.W.2 accompanied by P.W.5. Therefore we find that at the quickest possible time injured Nachammal was taken to P.W.9 for treatment. P.W.9 has no axe to grind against the accused nor has any special interest to support the prosecution. Her evidence shows that Nachammal, when examined by her, was conscious and oriented and Nachammal in clear terms implicated the accused in the crime, as put forward by the prosecution. A faint argument is made by the learned counsel for the appellant that as P.Ws.2 and 5 were with Nachammal in the Car on their way to hospital, there is a possibility of P.W.2 and P.W.5 tutoring Nachammal. We searched in vain their entire evidence whether could it be true and our answer is in the negative. P.W.5 has no special interest in the prosecution case nor does he have any grouse against the accused. P.W.5 would state that enroute Nachammal was blaming the accused as the person responsible for the crime. Though P.W.5 would state that, to him Nachammal gave a oral dying declaration implicating the accused, yet, P.W.14 admitted that when P.W.5 was examined during investigation, he did not make such a disclosure. Therefore

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without any difficulty, we disbelieve the oral evidence of P.W.5 that Nachammal gave a oral dying declaration to P.W.5 on their way to the hospital. P.W.2 had not deposed that Nachammal had given any such oral dying declaration to P.W.5. As stated earlier, P.W.5 is not an eye witness to the occurrence. P.Ws.1 to 4 alone are the eye witnesses. Though P.W.5 would state that Nachammal on her journey to the hospital was blaming the accused as being the cause for her burn wounds, yet, P.W.2 is totally silent. His evidence shows that P.W.5 was seated in the front side while Nachammal was with her daughter-in-law in the back seat. As we noted earlier, P.W.5 is an independent person. If really P.W.2 had tutored her mother-in-law to give a particular version as she wanted, then P.W.5 would not have failed to mention that in his evidence. Nachammal must be having terrible pain and agony as her burn injuries was fixed at 80% and therefore the possibility of Nachammal blabbering in the car mentioning the name of the accused in causing injuries to her cannot be totally ruled out. At the earliest point of time namely, at 12.30 p.m. on 27.8.2002, Nachammal had stated to P.W.9 that the accused had poured diesel on her and then set fire to her. Under these circumstances we reject the argument of the learned counsel for the appellant that by the time Nachammal was taken to the hospital, she was tutored by P.Ws.2 and 5. In other words, we conclude that the oral dying declaration made by Nachammal to P.W.9 is a voluntary act on her part without any inducement from any quarters including P.Ws.2 and 5.

8. This oral dying declaration is followed by the judicial dying declaration recorded by the Judicial Magistrate P.W.11. Ex.P.16 is the intimation sent by P.W.9 to the Magistrate and his evidence shows that on receiving it at 1.40 p.m. he reached the hospital at 2.00 p.m. to record the dying declaration. The evidence of P.W.9 and P.W.11, leave no room at all to doubt the fit; conscious and oriented state of mind of Nachammal. In other words, the evidence of P.Ws.9 and 11 undoubtedly establish the fit and conscious state of mind of Nachammal. P.W.9 had certified in Ex.P.15, the dying declaration about the fit and conscious state of mind of Nachammal. P.W.11's evidence also shows that he separately questioned Nachammal and satisfied that she was in a fit and conscious state of mind and then only he proceeded to record the dying declaration. In Ex.P.15, the Doctor had certified that the patient was conscious throughout the recording of the dying declaration. An argument is advanced by the learned counsel for the appellant relying upon the evidence of P.W.9 that P.W.2 was all the time by the side of Nachammal namely, even during the recording of her dying declaration and her presence by the side of Nachammal would have definitely influenced her mind. Though P.W.9 had stated so, yet, we find that when P.W.2 was further cross examined by the accused, she flatly denied that she was never by the side of her mother-in-law when the Magistrate recorded the dying declaration. She had firmly stated that when the Magistrate asked her to leave the bed side of Nachammal she immediately moved away. P.W.11 is the Magistrate, who recorded her dying declaration and to him no question what so ever was put

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by the defence that whether P.W.2 was by the bed side of Nachammal when he recorded the dying declaration. Therefore as against the evidence of P.W.9, the duty Doctor that P.W.2 was by the bed side of Nachammal, we have the evidence of P.W.2, the witness herself and the evidence of P.W.11. We have already noted that P.W.2 flatly denied her presence by the bed side of Nachammal. No question what so ever was put to P.W.11 about the possible presence of P.W.2 by the bed side of Nachammal. Therefore having an over all view of the entire case, we are inclined to reject the evidence of P.W.9, the duty doctor that P.W.2 was present all the time by the side of Nachammal when the dying declaration was recorded. P.W.9 saw Nachammal on 27.8.2002 and she was examined in Court on 27.4.2004. When P.W.9 had not noted the presence of P.W.2 by the side of Nachammal in any contemporaneous record at the time when the dying declaration was recorded, then we will have to only state that what she deposed in Court almost, after two years, is only from her memory. We are not inclined to hold that her memory is so very powerful that she would remember everything that had happened in the Head Quarters Hospital two years earlier. Under these circumstances we reject the argument of the learned counsel for the appellant that Ex.P.15 is not a voluntary disclosure but only a tutored disclosure. Then we have Ex.P.25, the statement recorded by P.W.14, the Inspector of Police. His evidence is that after he collected the Express Records, he commenced investigation and then reached the hospital. In the course of investigation at 7.30 p.m. he examined Nachammal and recorded her statement. Ex.P.25 is the said statement. On the death of Nachammal Ex.P.15 and Ex.P.25 assumes the character of dying declaration. As far as Exs.P.15 and P.25 are concerned, one thing is consistent namely, it is the accused, who poured diesel on Nachammal and then set fire to her. In addition to the two dying declarations, we will have to state that the oral evidence of P.Ws.1 to 4 also establishes the involvement of the accused, as disclosed under the two dying declarations.

9. Let us now apply our mind to the issue raised before this court by Mr.K.Kalayanasundaram on the inconsistencies/contradictions available inter se between Exs.P.15/P.25 and again between them and the oral evidence of P.Ws.1 to 4 on the other hand. According to the learned counsel for the appellant "in Ex.P.15 P.W.2's presence is not mentioned; whereas the presence of Vellaiammal (wife of the accused) is mentioned, whose presence is not mentioned in Ex.P.25. In Ex.P.25 the presence of Chinnu alias Nachimuthu Gounder and Anandha Goundar (P.W.5) have been mentioned as persons, who came to the crime scene where as in Ex.P.15 their appearance at the crime scene is not mentioned. In Ex.P.15 the accused is distributed with an overt act of stabbing on the leg of P.W.1 whereas the said overt act is missing in Ex.P.25. In Ex.P.25 there is a mention that when the accused pushed P.W.1 to the ground, the matchbox in his shirt pocket spilled out whereas in Ex.P.15 there is no such disclosure. On the other hand in Ex.P.15 it is only stated that the accused lighted a matchstick and threw it. In Ex.P.15 there is a mention

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that P.W.1 and the accused rolled on the ground whereas that is not mentioned in Ex.P.25. In Ex.P.25 it is mentioned that P.Ws.1 and 2 brought a gunny bag; covered Nachammal with it and tried to put out the flames, while it is not available in Ex.P.15. In Ex.P.15 it is stated that till four days prior to the occurrence day the accused and his cousin were irrigating the land from the well while in Ex.P.25 such a disclosure is not made." We find that the above materials are true. The prosecution case is that when the prosecution party went to irrigate the lands, the occurrence took place, when the accused protested. P.W.1 would state that for thirteen years prior to the occurrence day, the accused was irrigating the lands whereas P.W.2 would state that the accused was not irrigating the lands at all. This is another inconsistency not only between the evidence of P.Ws.1 and 2 but between their evidence on the one side and the contents of Exs.P.15 and P.25 on the other side. In other words, the pint raised is that when a part of the dying declarations namely, Exs.P.15 and P.25 are found to be incorrect, the entirety of both the dying declarations must be disbelieved. In our considered opinion, this argument cannot be sustained. There may be cases and cases where portion/portions of a dying declaration, which are found to be/proved to be incorrect, may be intermingled with the other disclosures made by the maker regarding the cause of death and the mixture of both materials would be so inseparable that it would not be possible for the court to find out where lies the truth. Doctrine of severability always comes into play in such situations. If, on a careful analysis of a dying declaration disclosing several facts, it is found that it would be possible to sever that portion of the dying declaration which is found to be/proved to be incorrect without in any way offending the remaining portion namely, the disclosure of the cause of death, then the court would not be committing any error in so doing.

10. The case law brought to our notice by the learned Additional Public Prosecutor for the State is a direct answer to the point raised before this court by the learned counsel for the appellant. The Supreme Court had laid down the Law in that case (i.e.) AIR 1974 SC 2188, (GODHU v. STATE OF RAJASTHAN) that when part of the dying declaration is found to be incorrect and the other part is found to be incriminating in nature and proved, could a court reject the entirety of the dying declaration or it can act upon that part of the dying declaration proved? The Supreme Court went on to say that when part of the dying declaration is severable and such severance would not affect the main part in any way by the impact of the severed part and for the contents of the main part, there is corroboration, the Court can safely act upon that part of the dying declaration. We better extract the law laid down by the Supreme Court in their own words.

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"16. We are also unable to subscribe to the view that if a part of the dying declaration has not been proved to be correct, it must necessarily result in the rejection of the whole of the dying declaration. The rejection of a part of the dying declaration would put the court on the guard and induce it to apply a rule of caution. There may be cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part of the dying declaration that it is not possible to sever the two parts. In such an event the court would well be justified in rejecting the whole of the dying declaration. There may,however, be other cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the court would not normally act upon a part of the dying declaration the other part of which has not been found to be true, unless the part relied upon is corroborated in material particulars by the other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trustworthy, the court can act upon that part of the dying declaration despite the fact that another part of the dying declaration has not been proved to be correct."

We find, on a perusal of Exs.P.15 and P.25 that there is a clear implication of the accused pouring diesel on Nachammal and then setting fire to her. The severance of the remaining part of the dying declaration would in no way affect the inherent quality of that part which is incriminatory against the accused. To put it more precisely, we state that by severing that part of the dying declaration which is found to be incorrect. (i.e.) on the basis the materials brought to our notice by the learned counsel for the appellant as extracted above - yet, the remaining part of the dying declaration can be kept in tact without in any way being damaged with regard to its inherent quality. The Supreme Court cautioned that to act upon the remaining part of the dying declaration, the Court should look for corroboration. We have overwhelming corroboration in this case namely, the evidence of P.Ws.1 to 4, who consistently say that the accused poured diesel on Nachammal and set fire to her. On going through the evidence of P.Ws.1 to 4 we are not in a position to find even a single material which would discredit their evidence regarding the occurrence proper. Therefore rejecting the submission made as above by the learned counsel for the appellant, we are inclined to accept that portion of Ex.P.15 and P.25 which implicate the accused in the crime and hold that his involvement is established not only by Ex.P.15 and P.25 but also by the evidence of P.Ws. 1 to 4. An attempt is made by the defence relying upon the evidence of P.W.6 to contend that he is the brain behind the whole case. P.W.6 admitted that the accused contested against him in the year 1996 for the Panchayat Board Election, in which the accused lost and

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thereafter the accused is complaining about the functioning of the Panchayat Board under the Presidentship of P.W.6. That was in the year 1996 and the occurrence is in the year 2002. Assuming there was some strained relationship between the accused and P.W.6 in the year 1996, yet, there is nothing on record to show that the live link of hatred between the two was maintained from 1996 till 2002 when the occurrence took place. In other words, we do not find any material from the evidence of P.W.6 that he was having continuous hatred against the accused to falsely implicate him in this case.

11. Next we go to the evidence of P.W.7, the Village Administrative Officer, before whom the accused is shown to have given the extra judicial confession. Ex.P.4 is stated to be the extra judicial confession of the accused, reduced into writing by P.W.7 to the narration of the accused. If really his confession is true, nothing prevented P.W.7 from taking the signature of the accused in Ex.P.4. Admittedly in this case Ex.P.4 do not contain the signature of the accused. P.W.7 admitted that the accused is a stranger to him and only at the time when he appeared before him, he had seen him. A person would give an extra judicial confession to a person in whom he has trust and confidence. Since that is lacking in this case and in view of the fact that in Ex.P.4 the accused had not put his signature at all, we are not inclined accept the oral evidence of P.W.7 that the accused appeared before him and gave the extra judicial confession. The evidence of P.W.1 that he saw the accused in the police station at 11.00 a.m. on the occurrence day itself runs contra to his evidence and that of P.W.13 that P.W.1 appeared in the police station only at 4.00 p.m. on that day.

12. It is no doubt true, as rightly contended by the learned counsel for the appellant there is a serious doubt regarding the recovery of M.O.1. There is no statement under Section 27 of the Evidence Act leading to the recovery of M.O.1. The evidence on record shows that, leaving the accused at a different place, search was conducted and the object was recovered by the efforts of the investigating officer. But however in the recovery Mahazar Ex.P.5, it is shown that M.O.1 came to be recovered as produced by the accused. Therefore there is definitely some suspicion regarding the recovery of M.O.1 and accordingly we disbelieve the evidence of the prosecution regarding recovery. In any event, nothing much turns on the recovered objects. We have also noted that the investigating officer had not taken pains to find out whether from the recovered objects diesel was detected. P.W.10, the Doctor, who did post-mortem, had deposed that he did not get the smell of diesel on the dead body when he conducted post-mortem. As far as the delay in giving the complaint is concerned, since we find the evidence of P.W.s 1 to 4 trustworthy and the other legal evidence referred to earlier, we have to state that the delay in giving the complaint would not affect the prosecution case. Whatever it is, when there is overwhelming evidence namely, the oral dying declaration given by Nachammal to P.W.9; the judicial dying declaration (Ex.P.15) given to

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P.W.11; the dying declaration given to P.W.14 (Ex.P.25) and the oral evidence of P.Ws.1 to 4, we are of the opinion that any shortcomings or infirmity in the prosecution case in either lodging the complaint or in effecting the recovery would not affect the substratum of prosecution case, which has a very strong foundation. For all the reasons stated above, we find that there are no merits in the appeal and accordingly it is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Tr/

To

1. The Additional District and Sessions-Judge (Essential Commodities Act), Special Court, Coimbatore (with records)

2. -do- Through the Principal Sessions Judge, Coimbatore.

3. The District Collector, Coimbatore.

4. The Director General of Police, Chennai.

5. The Public Prosecutor
High Court, Madras.

6. The Superintendent
Central Prison, Coimbatore.

7. The Inspector of Police
Kottur Police Station
Pollachi, Coimbatore District.

1 cc To Mr.K.Kalyanasundaram, Advocate, SR.41613.

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AKM(CO)
RVL 20.09.2006

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